



TENNESSEE AUCTIONEER COMMISSION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615-741-1831

**Board Meeting Minutes for May 21, 2018
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on May 21, 2018 in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Thorpe called the meeting to order at 9:00 a.m. and the following business was transacted:

BOARD MEMBERS PRESENT: Jeff Morris, John Thorpe, Ronald Colyer, and Randy Lowe

BOARD MEMBERS ABSENT: Adam Lewis

STAFF MEMBERS PRESENT: Glenn Kopchak, Caleb Darnell, Sarah Mathews, Robyn Ryan, and Erica Smith

ROLL CALL/NOTICE OF MEETING

Mr. Thorpe called the meeting to order with Director Kopchak taking roll. Director Kopchak then read the notice of the meeting into the record as follows: "Notice of the May 21, 2018 meeting of the Auctioneer Commission was posted to the Auctioneer Commission website on May 10, 2018."

AGENDA

Mr. Morris made a motion to adopt the agenda. This was seconded by Mr. Colyer. The motion carried by unanimous vote.

MINUTES

Mr. Morris made a motion to adopt the minutes from the February 12, 2018 meeting as written. Mr. Colyer seconded. The motion carried by unanimous vote.

EDUCATION REPORT

The Commission reviewed a request from the Nashville Auction School to grant three (3) hours of Continuing Education (CE) credit for an online course entitled, "Public Relations, Professionalism, and Personal Presentation".

Mr. Morris motioned to approve the course for the CE credit requested. This was seconded by Mr. Lowe. The motion carried by unanimous vote.

The Commission reviewed a request from the Tennessee Auctioneers Association to grant three (3) hours of Continuing Education (CE) credit for a classroom course entitled, "2018 TAA Summer CE", which would

grant Continuing Education (CE) credit for those conference attendees that attended the three (3) morning sessions.

Mr. Morris motioned to approve the course for the CE credit requested. This was seconded by Mr. Lowe. The motion carried by unanimous vote.

DIRECTOR'S REPORT

Director Kopchak provided a detailed analysis of the budget, to include current monthly trend analysis with a comparison to prior fiscal years. Director Kopchak noted that a net deficit for February was due to a spike in legal costbacks resulting from an increase in complaints referred and for the billable hours that went into preparation for two formal hearings that were scheduled for this meeting, which were ultimately continued.

At the last Commission meeting in February, Mr. Morris provided the "Sunset Hearing Update" and informed the Commission that it's term was extended another six (6) years. Mr. Morris further expressed his concern then about the reserve balance getting too high. As a result, the Commission requested at that time more information regarding the process of determining when reserve limits are too high and possible resolutions once that determination has been made. After speaking with the former Accounting Director, Bill Huddleston, Director Kopchak reported that there is not a policy that triggers the discussion for reserve reductions. Historically, administration has relied on a two (2) year operations reserve, but that has since been determined to be excessive. Director Kopchak informed the Commission that the conversation is fluid and often depends upon each legislative session review. Based on the current balance, this program has not been identified for immediate reductions. If financial trending analysis suggest that the program moves beyond responsible self-sufficiency towards continued and sustained growth or accumulation, then the Commission will evaluate fee reductions for licensees to include a reduction in contributions to the education recovery fund as well.

NAA Annual Meeting: July 17-21, 2018

Mr. Colyer motioned to approve Mr. Morris to attend the annual meeting of the National Auctioneer Association (NAA). Mr. Lowe seconded, and the motion passed by unanimous vote.

CE Audit

All licensees must obtain six (6) hours of continuing education per renewal cycle in order to renew a license. At the time of renewal, that requirement is evaluated to determine if that requirement was satisfied. Administration would like to move to a continuing education CE audit where five percent (5%) of all licensees are audited per quarter to determine if they have satisfied the CE requirement instead of the current one hundred percent (100%) audit environment where every licensee is audited.

Mr. Lowe motioned to approve the staff's request to conduct a five percent (5%) quarterly audit. This was seconded by Mr. Morris. The motion carried by unanimous vote.

LEGAL REPORT

- 1. 2017076231**
Type of License: Unlicensed
History: None

Respondent is a fire department and an anonymous Complainant alleges a former firefighter is having auctions

up to once a month without a license. Complainant further alleges another individual has been conducting the auctions at Respondent's fire department without a license. Complainant also alleges the auctions are advertised on Facebook, but does not specify who is advertising them and provides no proof of the Facebook advertisements. The Centralized Complaint Division reached out to Respondent's fire chief who stated that the former firefighter and/or the individual conducting the auctions claimed to have a license when it was decided auctions could be held at the fire department. Further, the fire chief stated the former firefighter gives 10% of the proceeds from the auction(s) to the Respondent fire department.

Counsel is unable to contact Complainant to request further information because Complainant did not provide any contact information and wishes to remain anonymous. Counsel sent an investigator to Respondent fire department and was provided with an investigative report.

The investigator met with the fire chief who originally responded to the complaint on May 5, 2018 and obtained a sworn affidavit which stated the former firefighter had an acquaintance (the "individual" referenced above) hold a one-time auction at the fire station to help benefit the volunteer efforts and supplement their limited budget. 10% of the proceeds from this auction were given to the Respondent fire department. Further, the fire chief states he was informed from the very beginning that the individual conducting the auction was licensed and "everything was 'above board' and legitimate." Once the fire chief was notified of this complaint, he questioned the former firefighter more closely and found out no one had an auctioneer license and he immediately put a stop to the plan for future auctions. The fire chief further stated he would not tolerate illegal activities at his fire station and swore in the affidavit this will not happen again.

The investigator surveyed the fire hall and found no activities or advertisements displayed anywhere in the vicinity. Additionally, he conducted field interviews at a nearby store asking if auctions had been taking place and no one was aware of any auctions that had occurred. The next day, May 6, 2018, the investigator drove to other businesses in the area and asked random people if they were aware of any auctions that had happened or were scheduled, and no one was aware of any.

Once the investigator arrived home on May 7, 2018, he received a call from the former firefighter referenced above and he stated he was merely a seller and did not run, conduct, or call any auctions. The former firefighter also confirmed what the fire chief stated about the auction being a one-time thing and that the chief put a stop to it once he was made aware no one had a proper license to have an auction. Additionally, the former firefighter stated he has a license in Virginia and conducts auctions there.

In conclusion, the investigator's opinion is that the fire chief is being cooperative and truthful, and that one auction did occur but there is absolutely no evidence that would lead the investigator to believe this will happen again or that it happened more than once. Therefore, Counsel recommends a letter of instruction be sent to the Respondent fire department and a letter of warning be sent to the former firefighter regarding unlicensed activity per Tenn. Code Ann. § 62-19-102.

Recommendation: Letter of Instruction to the Respondent Fire Dept. and a Letter of Warning to the former firefighter regarding unlicensed activity per Tenn. Code Ann. § 62-19-102.

Decision: The Commission voted to accept the recommendation of Counsel, and to open a complaint against the individual who conducted the auction.

2. **2017077031**
First License Obtained: 1/30/1987
License Expiration: 2/28/2019
Type of License: Auctioneer
History: 2009 Letter of Warning

Complainant alleges he hired Respondent in November 2016 to remove and sell items remaining at Complainant's home in Georgia from an estate sale he had. Complainant alleges both he and Respondent loaded Respondent's truck with all items to be sold by Respondent. Complainant alleges Respondent stated he was in a hurry that evening and that he would take inventory of the items removed from the home as soon as he needed to for the auction(s). Complainant states he was supposed to receive this inventory detailing all items removed, their disposition, and the amount for which each was sold but never received it. Complainant alleges he knows his items were sold at some point because he states he called and spoke with Respondent in March 2017, and Respondent allegedly remembered the auction(s) and the selling price for a specific work of art being \$750.00. At the time this complaint was filed on Nov. 30, 2017, Complainant had still not received the inventory, accounting or any of the information Respondent promised to provide him, and he states he is willing to take legal action.

An investigator met with Respondent on April 30, 2018 and obtained two sworn affidavits from Respondent. The investigator then met with Respondent again on May 10, 2018 for a follow up meeting and Respondent provided copies of his tally sheet and records from the auctions held where Complainant's property was sold. Respondent readily admits that he entered into an agreement with Complainant to auction his property, met with Complainant at his home and loaded the property into Respondent's truck, and sold Complainant's property at auctions. Respondent further states the money made from the auctions as well as the receipts had been stolen from Respondent's home in December 2016, and Respondent has spoken with Complainant numerous times about this and tried to explain to Complainant the terms of the agreement regarding the costs of hauling, storing, and paying auction commissions. Respondent states Complainant has been consistently belligerent and argumentative, and does not understand the auction business or why there are costs associated with the selling of Complainant's property at auction. Respondent met with Complainant on May 14, 2018, and paid Complainant \$1,284 for all items sold at auction, plus Respondent volunteered to and did pay Complainant an additional \$642 as a 50% interest fee for the delayed payment. Respondent provided the receipts for these payments signed by Complainant to the investigator, which also included a statement confirming Respondent has paid all monies owed to Complainant.

In conclusion, the investigator's opinion is that Respondent is honest and was forthright in his interview and was very concerned with making this situation right. Respondent also followed through on everything he said he would do when he spoke with the investigator more quickly than they had planned. Counsel considers Respondent has been licensed for over 31 years with a single Letter of Warning issued in 2009 for a different violation. Counsel thus recommends issuing a Letter of Warning citing Tenn. Code Ann. §62-19-112(b)(4) for failing to remit or account for money coming into licensee's possession since Respondent was not able to provide a police report showing the money was stolen and because it had been over a year since Respondent collected the items from Complainant for auction.

Recommendation: Letter of Warning citing Tenn. Code Ann. §62-19-112(b)(4).

Decision: The Commission voted to authorize a Consent Order with a \$1000 fine, citing Tenn. Code Ann. §62-19-112(b)(4), (8) and (9).

- 3. 2017077411**
Type of License: Unlicensed – Out of state Firm
History: None

Complainant is a Tennessee resident who states he bid on and purchased a backhoe from Respondent's auction, and Respondent is based out of Seattle, WA. Complainant states Respondent rated the item as a "4," on a "1-5" scale with "5" being the best condition. Complainant alleges the item was worn out, the charging system was

bad, and feels it should have been rated a “1” after all of the costly repairs Complainant states he has made, estimating upwards of \$10,000. Complainant further alleges Respondent was hard to contact after the purchase when Complainant wanted to discuss the issues he had with the backhoe. Eight days after Complainant filed this complaint, he emailed the complaint division stating the issues he mentioned in the complaint have all been resolved to his satisfaction with Respondent and asked to withdraw the complaint.

Respondent responded to the complaint after Complainant asked to withdraw it, and stated a refund of \$4,000 was sent to Complainant and has cleared their account. Further, Respondent states the issues referenced in the complaint have been resolved to Complainant’s satisfaction.

Counsel was not provided with any evidence or documentation to review or to prove whether Respondent committed any violations of statutes or rules, and considering the issues complained about have been resolved to Complainant’s satisfaction and Respondent refunded his money promptly, Counsel recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission voted to accept Counsel’s recommendation.

4. 2017080371
Type of License: Unlicensed
History: None

Complainant wishes to remain anonymous and alleges Respondent is holding auctions at their business location in Tennessee without a gallery/firm license.

An investigator was sent to Respondent’s business location where Complainant alleges auctions are being held every Saturday night at 6 p.m. On December 23, 2017, the investigator found the location to have a sign posted out front identifying the location as Respondent’s business name, and saw an additional photo of signage on a window advertising the same name. The investigator observed a man at a podium calling out and accepting bids from the crowd on the auctioned merchandise. The investigator then met Respondent’s owners who confirmed they did not have a gallery/firm license but stated they didn’t think they needed one because the man conducting the auctions has an active auctioneer license and owns his own auctioneer company with an active gallery license, both active through 2019 and originating in 1992. The investigator’s report concludes that the investigation into this matter and the discoveries made indicate the complaint filed accusing the Respondent of unlicensed activity appears to be a valid concern as Respondent is in violation of licensing requirements for not properly possessing the required license (Gallery License) to hold auctions on a regular basis at the location.

Counsel recommends issuing a civil penalty of \$ 1,000 for violation of Tenn. Code Ann. § 62-19-102(a)(1), which states that it is unlawful for any person to act as or advertise or represent to be an auctioneer, apprentice auctioneer or firm without holding a valid license issued by the commission. Counsel also recommends opening a complaint against the licensee who is conducting the auctions at the Respondent’s location because his license is not associated with Respondent per the licensing records.

Recommendation: Consent Order assessing a civil penalty of \$ 1,000 for violation of Tenn. Code Ann. § 62-19-102(a)(1) and opening a complaint against the licensee who is conducting the auctions at the Respondent’s location.

Decision: The Commission voted to accept Counsel’s recommendation.

5. 2018001931
Type of License: Unlicensed
History: None

Complainant alleges Respondent was performing a live auction on Facebook on January 4, 2018 so she called the office to make sure he had a license before she purchased anything. Complainant verified Respondent does not have an auctioneer license and provides screenshots of who Complainant alleges to be Respondent on a Facebook page called “[Name of County], TN Buy, Sell & Trade Anything Low Prices!” standing next to a table with various items in the various screenshots, such as women’s shoes, a screwdriver set, possible headlamps of some sort, with a handwritten poster stating everything is sold “as is” and the time and place items can be picked up if purchased. When Complainant was asked directly if there were specified start and stop times enforced for bids on items and if the auction was online only or if there was a location available to bid on items, Complainant only stated she didn’t see if there was a time that started and ended and was just a live online auction. Complainant has not been able to provide us with more information about these allegations, any contact information for Respondent, or any proof that he is not just simply holding a timed auction online in a way he may be exempt from needing an auctioneer license per Tenn. Code Ann. § 62-19-103(9).

Counsel ran a CLEAR Report attempting to obtain valid contact information in order to attempt to correspond with Respondent by phone, email, or by mail to Respondent. All emails Counsel attempted to send to three different email addresses were undeliverable, none of the four phone numbers worked (either wrong number, no answer with no ability to leave a voicemail or disconnected), and no response has been received from Respondent as all mail has been returned to our office as undeliverable. Counsel recommends closing and flagging this complaint in case Respondent tries to apply for a license or if we get another complaint in the future.

Recommendation: Close and flag.

Decision: The Commission voted to accept Counsel’s recommendation.

6. 2018005371

Type of License: Unlicensed

History: None

Complainant No. 1 is a licensed apprentice auctioneer who alleges operates as an auction company, advertise themselves as such, are not licensed auctioneers nor do they have a gallery/firm license, accept consignments, charge a buyer’s premium, and have extended bidding. Complainant provides a screenshot of Respondent’s website that does not refer to any of the allegations mentioned. Complainant No. 2 is also a licensee who filed a similar complaint against Respondent the day after Complainant No. 1 alleging Respondent “uses the word ‘auction’ and is operating without an auction license. The website does not list a principal auctioneer. There is no firm number listed and their address is the same as a post office in Nashville” and does not provide any evidence.

Respondent states they are a 100% online auction that is featured on the world wide web through an auction software. Respondent allows people to pick up items won in a specific city in Tennessee since Respondent travels and can set up a temporary location for pick up. Further, Respondent states they have no fixed location in Tennessee, the mailing address is a PO Box in a specific city in Tennessee mentioned by Complainant No. 2, and if it needs to be changed then Respondent will change it but notes it is simply to receive mail. Respondent suggests their website be researched, which Counsel did, and it shows Respondent does not advertise themselves as auctioneers, but as an online auction company only. Respondent does not operate live auctions, video auctions, extended bid auctions, simulcast of live auctions, or anything that would require a license. Respondent states they do accept consignments but mostly sell their own merchandise, and don’t know of any law prohibiting such. Respondent states the “buyer’s premium” is a fee to assist with the operation of running a website, is taxable, and reported to the IRS on tax returns. Respondent is willing to correct anything necessary but understands that thus far, they have fallen under the exemption in Tenn. Code Ann. § 62-19-103(9).

Counsel found no evidence that Respondent does not fall under the exemption in Tenn. Code Ann. § 62-19-103(9) and recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission voted to accept Counsel's recommendation.

7. **2018010711**
First License Obtained: 4/8/2013
License Expiration: 4/7/2017
Type of License: Firm - Expired
History: None

Complainant alleges Respondent sold Complainant's merchandise at auction and paid Complainant with two bad checks dated June 10 and June 23, 2017. Complainant provides copies of the correspondence where he has tried to discuss this with Respondent as well as copies of the checks, and thus far, Respondent has not responded to Complainant.

Respondent was sent a copy of this complaint by certified and regular mail, as well as by email on February 20, 2018, and again by email on March 23, 2018 and April 27, 2018. The emails were delivered to the email Respondent provided when he was licensed but no response has been received to the mail or emails. Respondent's license expired on April 7, 2017.

Counsel recommends issuing a civil penalty of \$1,000 for violation of Tenn. Code Ann. § 62-19-102(a)(1), which states that it is unlawful for any person to act as or advertise or represent to be an auctioneer, apprentice auctioneer or firm without holding a valid license issued by the commission and a \$1,000 civil penalty for violation of Tenn. Code Ann. §62-19-112(b)(4) for failing to remit or account for money coming into licensee's possession.

Recommendation: Consent Order assessing a civil penalty of \$ 2,000 for violations of Tenn. Code Ann. § 62-19-102(a)(1) and Tenn. Code Ann. §62-19-112(b)(4).

Decision: The Commission voted to accept Counsel's recommendation.

8. **2018013911**
First License Obtained: 1/31/2014
License Expiration: 1/30/2020
Type of License: Firm/Gallery Branch
History: None

Complainant alleges Respondent has no auction license but provides no further detail or documentation to support his allegations.

Respondent immediately provided copies of their auction firm and auctioneer license which are both active and in good standing, and provided a copy of their business tax license from the county clerk where the firm is located.

Counsel found no evidence that Respondent has violated any rules or statutes and recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission voted to accept Counsel's recommendation.

9. 2018014001
First License Obtained: 10/7/2015
License Expiration: 10/6/2019
Type of License: Firm/Gallery Branch
History: Flagged for a bad check

Complainant remains anonymous and alleges Respondent is running an auction under a different name than the name Respondent's license is associated with in our database but only provides an undated screenshot of what appears to be a Facebook page showing the name of an "auction and vendor mall" with Respondent's gallery license number listed.

Respondent states these allegations are completely false, and the name of Respondent's gallery has always been the same as the name listed in our database assigned to the gallery license number. Respondent states they opened a vendor mall (with 31 vendors) in the same building under the name shown in the Facebook screenshot but had to close the business due to medical reasons.

Counsel found no evidence that Respondent has violated any rules or statutes and recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission voted to accept Counsel's recommendation.

10. 2018015071
First License Obtained: 5/22/2015
License Expiration: 5/21/2019
Type of License: Firm/Gallery Branch
History: None

Complainant states she went to Respondent's auction house one time about three years ago and simply registered for a bidder's number. Now, Complainant states she gets a call/voicemail from Respondent every Friday for the auction set for that day and same on Saturday. Complainant notes this is "not the end of the world" and has successfully blocked Respondent from her phone and states they honored her request to stop texting, but she is still getting voicemails on her cell phone where she is unable to stop the calls for whatever reason.

Respondent promptly responded to this complaint and stated they apologize for any inconvenience to the Complainant and confirms that the Complainant's contact information and all phone numbers have been completely deleted from their call list as of March 27, 2018. Respondent states if Complainant has any issues with this in the future, Respondent will be happy to assist and provides direct contact information for Complainant.

Counsel found no evidence that Respondent has violated any rules or statutes and recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission voted to accept Counsel's recommendation.

11. 2018015431
First License Obtained: 8/4/2017
License Expiration: 8/3/2019
Type of License: Firm/Gallery Branch
History: None

Complainant states he went to Respondent's auction on March 2, 2018, and purchased two cars for his family. Complainant admits Respondent's owner stated before the auction began that there were no warranties on any vehicles being auctioned that day but Complainant also alleges he guaranteed the cars would be running and driving. Complainant states he even spoke to Respondent's owner and let him know Complainant is on disability and cannot afford to buy cars that will have to be repaired or have any issues, and states Respondent's owner assured him that the cars were "solid vehicles." Complainant states one of the car's transmission failed on the way out of the auction and the other car had no brakes, and parts were hanging off the steering wheel causing Complainant to go into a ditch. When Complainant contacted Respondent's owner about these issues, Respondent's owner allegedly said he would speak with the cars' previous owners and work it out with Complainant.

Respondent states that they did not conduct any part of this auction Complainant references. Respondent states the auction was conducted by another licensed auctioneer and his firm, and provides the auctioneer and firm license numbers. Respondent states their firm address was still showing as this other auctioneer's firm address because the other firm has been conducting auctions at Respondent's address for a few months. Respondent states he has been getting his forms completed and his new location set up and is sending the updated address information to licensing immediately, which Respondent has since done.

Another complaint was opened against the auctioneer Respondent states conducted the auction and is presented below, complaint number 2018017271.

Counsel found no evidence that Respondent has violated any rules or statutes and recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission voted to accept Counsel's recommendation.

12. 2018017271
First License Obtained: 2/17/2010
License Expiration: 2/21/2020
Type of License: Auctioneer
History: 2015 Consent Order, did not pay complainant full amount owed on sales at auctions conducted by respondent

Complainant and the complaint is the same as the complaint 201801543 above.

Respondent states Complainant bought the cars from the owner of the location where the auction was held, not from Respondent. Respondent further states that he was conducting an auction for this location that day and did meet with Complainant and the location's owner about Complainant possibly purchasing cars, but Respondent reminded the location's owner that he did not have a license to auction cars and would not participate in the sale of any cars by auction to Complainant or to anyone at any time. Respondent then states he did auction several thousand dollars' worth of merchandise for the location's owner that day and was approached by the location's owner with Complainant. This is when Respondent was asked by the location's owner if he would auction the cars and Respondent declined because there was no proper license to do such, and states the location's owner took the ticket clerk with him and Complainant to the other side of the three acre property out of Respondent's view. Complainant and other bidders followed them and states the location's owner actually was the one who

sold the two cars to Complainant for around \$4,000, based on what Respondent has heard. Respondent also confirms that he heard Complainant had a wreck about three blocks away after leaving the auction in the car he bought, and Complainant's wife was driving the other car purchased and was having transmission trouble. Respondent concludes by stating he saw Complainant return to the auction site and ask the location's owner for his money back since the location's owner had guaranteed the cars would run. Respondent also states he has resigned as an auctioneer with regards to this location's auctions and suggests we forward this complaint to the location's owner.

Counsel finds no evidence Respondent violated any statutes or rules and recommends dismissal of this complaint, and further recommends opening a complaint against the location's owner based on the contact information and name provided by Respondent.

Recommendation: Dismiss and open complaint against location's owner.

Decision: The Commission voted to dismiss, but not to open a complaint against the location's owner.

Re-Present

13. **2017063411**
First License Obtained: 2/1/2005
License Expiration: 12/18/2018
Type of License: Firm
History: 2016 Letter of Warning

Complainant states Respondent was "brought in to auction off his personal collectibles store" and further states the auction was to be held in Complainant's building. Complainant states Respondent began taking the items to be auctioned to their location in another city where Complainant has never been. Complainant alleges Respondent took 400 of his high priced Barbies and sold some of them for amounts ranging from \$5-\$15 and Complainant alleges he had originally bought some of these Barbies for upwards of \$100. Complainant further alleges Respondent took Complainant's personal things that were not to be sold, including a couch that Complainant had just reupholstered for \$1,500 and sold it for \$50. Complainant states Respondent has billed him for \$1,000 but took \$500 off for the couch that never went through an auction. Complainant also alleges Respondent told him they would not release Complainant's inventory or release the money owed from the sale of his auctioned items for 9 weeks. Complainant states Respondent has all of the cabinets for his Barbies, a serving cart, server tables, and a hutch, but Complainant has no way of knowing what else Respondent may have as Respondent allegedly refused to give Complainant an inventory list. Complainant states Respondent told him he had until the end of the month to get everything out or he would get rid of Complainant's items. Complainant does not provide documentation or proof to support the allegations made against Respondent.

Respondent states Complainant originally hired an unlicensed auction company to conduct his auction on site at his store but states no one showed up to the auction. Respondent further states Complainant fired the unlicensed auction company and signed a contract with Respondent on June 26, 2017 to conduct the auction. Respondent engaged in extensive advertising for Complainant's auction for 3 weeks and attempted an on-site auction as Complainant requested but there was not sufficient attendance to conduct the auction as planned. Respondent then met with Complainant and discussed options to liquidate his merchandise, and advised him that Respondent felt the best option was to move the auction to a location where Respondent had access to an auction house, and Complainant verbally agreed to this plan. Respondent then began moving the items to the auction house and conducted several auctions on Saturday nights and Complainant received a check and a closing statement after each auction until they verbally mutually agreed to stop. Respondent states all of Complainant's Barbies are still in boxes and stored at Respondent's expense after he was only able to sell less than a dozen of them through the auctions, and Complainant agreed they may have better luck selling them closer to Christmas. Respondent states the couch referred to in the complaint had been in Complainant's office

that had been closed for several years and had been used for customers when the office was open. Respondent also states the couch had normal wear and tear from such use and because Complainant did not inform Respondent that the couch was not for sale, it was sold at auction for \$50. Respondent further states all items have been boxed up and Respondent is waiting for Complainant to secure a place to store the items because Respondent has been paying for storage. Respondent is unsure what Complainant takes issue with regarding the bill sent to him because it was invoiced and detailed that the costs were incurred as a result of 5 people working for 6 days to clean items and remove them from the closed office building, put the items in storage pods and the building was full of items from "floor to ceiling." Respondent states Complainant refuses to pay the invoice despite the fact that Respondent has paid Complainant all monies owed from all items sold at the auctions. Respondent denies ever stating anything about holding any inventory or monies owed for 9 weeks, as Respondent provided copies of 5 checks totaling \$1,785.54 made payable to Complainant for auction proceeds for each auction held by Respondent for Complainant. Respondent has not given Complainant a 30 day notice regarding the items he is currently paying to store, and Respondent has sent Complainant a release form and is awaiting Complainant's response. Respondent concludes by denying all allegations and stating Complainant has ignored all of the attempts Respondent has made to contact him while Respondent is patiently waiting for Complainant to obtain a storage unit so Respondent can release the items that were not sold.

Counsel finds no evidence that Respondent has violated any statutes or rules and recommends dismissal of this complaint.

Recommendation: Dismiss

Decision: The Commission voted to defer their decision to the following AUC Commission meeting to request further information for them to consider and look over. Commission requests that Counsel try to get the contract for the auction.

Update: Counsel reached out to Respondent and Respondent provided the requested contract agreement between Respondent and Complainant as requested by the Commission. Counsel has the copy and is ready to discuss any questions the Commission has about the contract.

New Recommendation: Discuss and dismiss if no violations proven after discussion of new information and contract.

Decision: The Commission voted to accept Counsel's recommendation to dismiss the complaint.

Originally Presented December 2016

**14. 2016057551
Unlicensed Activity
History: None**

This complaint was filed anonymously for unlicensed activity. Complainant states that multiple auctions are listed online and fail to provide auctioneer or firm license information. The advertisements read as follows:

********LIVE AUCTION*****
Auction EVERY Friday Night***

*Respondent Name
Address*

Join us for a LIVE AUCTION, Friday at 7 p.m. Beat the heat and get some great antiques, collectibles, vintage & mid-century furniture, glassware, washers, dryers, home décor, clocks, retro items, dolls, yard & garage sale items and much more.

**Different Items Every Week!!!*

*Doors open at 6 p.m. if you have any questions call *** at phone number.*

An investigation was conducted into the unlicensed activity. Investigator Wilson-Weaver went to the building at which the auction was to be held and registered as a bidder. Investigator Wilson-Weaver observed the auction for approximately thirty (30) minutes during a male subject called the auction and directed the activities of several individuals. Investigator Wilson-Weaver spoke with the person from whom she obtained a bidder number and identified herself as an investigator for the State of Tennessee, she requested to speak with the owner. Investigator Wilson-Weaver spoke with the Respondent owner and asked for a copy of the auctioneer, firm and/or gallery licenses. Respondent owner stated that his regular auctioneer was unavailable for this auction, so he engaged another auctioneer/firm to conduct the auction. Investigator Wilson-Weaver spoke with the owner of the auction firm who stated that his apprentice was calling the auction that night. The firm, sponsoring auctioneer and apprentice auctioneer all had active licenses with the state.

Respondent's owner stated in an affidavit that he has been in business for approximately two (2) months and has hired a licensed auctioneer to call the auctions. Respondent stated he did not know anything about a gallery license until about three (3) weeks prior when one of the auctioneers asked him.

Reasoning and Recommendation: *Counsel recommends the authorization of a **civil penalty in the amount of One Thousand Dollars (\$1,000)** against Respondent #1 for violation of T.C.A. § 62-19-125(a) regarding gallery license (unlicensed). The Consent Order will contain language stating that if Respondent applies for a gallery license within thirty (30) days of receiving the Order, the civil penalty will be reduced to **Two Hundred Fifty Dollars (\$250)**.*

Originally Presented February 2017

15. 2016066901
Unlicensed Activity
History: None

Complaint is filed anonymously. Complaint alleges that Respondent is advertising and operating auctions without an Auctioneer's license. The Respondent has been investigated by TDCI while operating under a different name. The Commission previously authorized a Consent Order and \$1,000.00 civil penalty.

Respondent did not respond to the complaint.

Reasoning and Recommendation: Counsel recommends the authorization of a **Consent Order with a \$1,000.00 civil penalty** in regards to T.C.A. § 62-19-125(a), which addresses the requirement for a Gallery license.

UPDATE: Matter was in litigation status. In preparing, it was determined that the first matter listed above had a paid consent order. In the present matter, the complaint was opened on or about October 31, and the previous complaint under a different name was opened about a month previously. In the first matter above, there was an investigation and an auction did take place. Respondent was sent a consent order on December 6, 2016 but it was not delivered as of Jan. 10, 2017. On January 31, 2017, Respondent owner signed a consent order with a payment plan. That payment plan was completed on November 9,

2017. During the previous October when the investigation took place, Respondent owner moved location and no longer used same name and an auction was posted on a Facebook site on Oct. 28, but it is not clear if that auction took place. This complaint was sent to Respondent in November, 2016, prior to the consent order in the first complaint. A consent order was sent from the second complaint, but was not delivered. A copy was then sent via email in March 2017 and Respondent emailed back stating Respondent stated that Respondent had signed the consent order and had made payments and was confused. There is no question that in October 2016 Respondent did advertise an auction with this name as opposed to previous name. However, an internet search has found nothing by either name since then and Respondent did pay a consent order regarding the first complaint where an auction took place. This complaint was in the same time period as the previous matter and it appears that all activity of Respondent stopped after the first consent order was sent. And Respondent did pay a penalty of \$1,000.00. At the October auction, there was a licensed auctioneer and since then, Respondent has also taken courses but has not taken the exam. It does appear that the investigation, the consent order and payments has stopped all activities.

New Recommendation: Letter of warning.

Decision: The Commission voted to accept Counsel's recommendation.

Legislative Updates

Ms. Mathews noted that claims against the recovery portion of the education and recovery fund are very rare. When the Commission comes before the legislation again in six (6) years at the next sunset hearing, a significant reduction in that fund may be in order if there is still no significant reduction in that fund due to claims filed.

Ms. Mathews provided a summary of HB2248/SB2465 referred to as the "Fresh Start Act" which generally speaking will not allow for denying an applicant for licensure due to a felony unrelated to the license for which the applicant applied.

Designate Member to AUC Task Force

Ms. Mathews provided a summary of the amendment to HB2036/SB2081 which in effect creates a "Tennessee Task Force on Auction Law Modernization".

Mr. Colyer motioned to appoint Mr. Morris to serve as the designated member on the task force. Mr. Lowe seconded, and the motion passed by unanimous vote.

NEW BUSINESS

Southeastern School of Auctioneering requested that their 80 hour course be recognized as qualifying education. Southeastern School of Auctioneering courses are already accepted in TN as continuing education (CE), and South Carolina licensees are accepted in TN for reciprocity.

Mr. Lowe motioned to recognize Southeastern School of Auctioneering's 80 hour course as qualifying education (QE). Mr. Morris seconded, and the motion passed by unanimous vote.

NAA Annual Meeting: July 17-21, 2018 (continued)

Mr. Morris motioned to approve Ms. Mathews to attend the annual meeting of the National Auctioneer Association (NAA). Mr. Lowe seconded, and the motion passed by unanimous vote.

Newsletters

Regarding newsletters, Director Kopchak informed the Commission at the last meeting that a request for proposal (RFP) was created. He updated the Commission that a contract has since been awarded to the Nashville Auction School for a biannual newsletter with the first installment projected for December.

ADJOURNMENT

Mr. Colyer made a motion to adjourn, which Mr. Lowe seconded. There being no other new business, Mr. Thorpe concluded the meeting at 10:23 am.